



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

JOHN W. McCONNELL
COUNSEL

MEMORANDUM

August 7, 2017

To: All Interested Persons

From: John W. McConnell

Re: Request for Public Comment on Proposed Motion Templates in Residential Mortgage Foreclosure Proceedings

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The Administrative Board of the Courts is seeking public comment on three uniform motion templates proposed by the Office of Policy and Planning for statewide use in cases where a homeowner defendant has defaulted in a residential mortgage foreclosure matter. As described in a memorandum accompanying the proposal (Exh. A), these templates were developed in consultation with the UCS Statewide Foreclosure Working Group (comprised of judges and court personnel from each judicial district), and members of the New York City Bar Association's Residential Mortgage Foreclosure Task Force.

The templates consist of:

- a motion for default judgment and order of reference (Exh B);
- a motion to confirm referee report and for a judgment of foreclosure and sale (Exh. C); and
- a motion for a default judgment, order of reference, and judgment of foreclosure and sale (Exh. D).

The goal of these forms is to standardize practices and allow more efficient processing of residential foreclosure cases around the State.

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Persons wishing to comment on the proposed templates should e-mail their submissions to rulecomments@nycourts.gov or write to: John W. McConnell, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York 10004. **Comments must be received no later than October 9, 2017.**

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.

EXHIBIT A

To: Administrative Board
From: Hon. Sherry Klein Heitler, Chief, Office of Policy and Planning
Re: Residential Mortgage Foreclosure Motion Templates
Date: July 7, 2017

The Office of Policy and Planning seeks the approval of uniform motion templates for use statewide in residential mortgage foreclosure cases where the defendant/homeowner has defaulted. As this Administrative Board is aware, the Office of Policy and Planning has examined the statewide foreclosure inventory for several years now as part of the Excellence Initiative and previously submitted for your approval forms for use during foreclosure settlement conferences (FSC). Since being implemented in March of 2016 the FSC forms have proven to be extremely beneficial to the litigants and have helped courts keep track of cases and reduce backlogs. The attached motion templates were likewise developed as part of our ongoing efforts toward streamlining case processing and reducing backlogs.

Three motion templates have been developed and each contains a proposed notice of motion, attorney affirmation, and proposed order/judgment.

- **Template 1 - Motion for Default Judgment and Order of Reference** – To be used by a plaintiff moving for an order appointing a referee to compute the amount due by the defendant.
- **Template 2 - Motion to Confirm Referee Report and for a Judgment of Foreclosure and Sale** – To be used by a plaintiff after the amount due is computed by the referee to confirm the referee's report and for a judgment of foreclosure and sale.
- **Template 3 - Motion for a Default Judgment, Order of Reference, and Judgment of Foreclosure and Sale** - This is essentially a combination of Templates 1 and 2. It was developed in response to requests by some judges that they wanted a mechanism for effectuating the order of reference and judgment of foreclosure and sale in one order. This streamlined process would allow judges to compute the amount due without having to appoint a referee.

These templates were developed in consultation with, and after extensive feedback from, the Unified Court System's Statewide Foreclosure Working Group, comprised of judges and court personnel from each judicial district, and members of the New York City Bar Association's Residential Mortgage Foreclosure Task Force, which includes representatives from civil legal service providers, the defense bar, and the plaintiffs' bar.

This would not be the first instance of uniform motion forms being adopted for use in civil cases. For many years now uniform motion forms have been utilized in uncontested divorce cases and have proven to be highly effective. As with divorce cases, we believe that the standardization of motion practice in foreclosure cases will enable judges and court personnel to more efficiently review and process cases. These templates will also assist litigants by ensuring uniformity of practice statewide.

Based on the foregoing, the Office of Policy and Planning respectfully requests that the annexed motion templates be made available for public comment.

EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF

-----X

Plaintiff(s),

INDEX NO.:

**NOTICE OF MOTION FOR A
DEFAULT JUDGMENT AND
ORDER OF REFERENCE**

v.

MORTGAGED PROPERTY:

COUNTY:

SBL #:

Defendant(s)

-----X

PLEASE TAKE NOTICE that, upon the affirmation of [Attorney Name] dated [Date], the affidavit of [Name of Bank Representative], sworn to [Date], the exhibits attached thereto, and all prior proceedings in this case, Plaintiff [Name of Plaintiff] will move this court at [Insert Date and Time] before [Insert Appropriate Part of Court], at the Supreme Court, [Insert County Name] County, [Insert Court Address], or as soon thereafter as the parties may be heard, for an order:

1. Appointing a referee to compute the amount due to Plaintiff, examine whether the mortgaged property known as [Insert Street Address] may be sold in parcels, and make his/her computation and report with all convenient speed pursuant to RPAPL §1321;
2. [Choose One] Adding names of tenant(s) residing at mortgaged property as named defendants pursuant to RPAPL §1311, amending the caption to add [Names of Tenant(s) Residing at Mortgaged Property as Defendants], and removing "John Doe" as a party defendant in this action -OR- Removing "John Doe" as a party defendant in this action as no tenants reside at the property and amending the caption to reflect the

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF

-----X

INDEX NO:

Plaintiff(s),

**ATTORNEY AFFIRMATION
IN SUPPORT OF PLAINTIFF'S
MOTION FOR A DEFAULT
JUDGMENT AND ORDER OF
REFERENCE**

v.

MORTGAGE PROPERTY:
COUNTY:
SBL #:

Defendant(s).

-----X

[Attorney's name], pursuant to CPLR 2106 and under the penalties of perjury, affirms as

follows:

1. I am an attorney at law and a[n] [Partner, Of Counsel, Associate] with [Name of Law Firm] the attorneys of record for the Plaintiff. I am fully familiar with the facts, court papers and proceedings of this action based upon a review of the file maintained by my office.

2. True and accurate copies of the following supporting documents are attached hereto:

<u>Document</u>	<u>Tab</u>
Affirmation pursuant to Admin Order 431/11 or Certificate of Merit	Exhibit A
Note	Exhibit B
Mortgage	Exhibit C
Assignments	Exhibit D
Notice of Default	Exhibit E
RPAPL §1304 90 Day Notice	Exhibit F
Department of Defense Search results	Exhibit G
Summons and Complaint	Exhibit H
Notice of Pendency	Exhibit I
Affidavits of Service	Exhibit J
Affidavit of Service by Mail pursuant to CPLR 3215(g)(3)(iii)	Exhibit K
Affidavit of Merit and Amount Due	Exhibit L

Affirmation of Regularity
[*Power of Attorney with Pooling and Servicing Agreement*]
[*Secretary's Certification*]
[*Include any additional exhibits here*]

Exhibit M
Exhibit N
Exhibit O
Exhibit P

Legalback No. 2 – filed contemporaneous with this motion
Proposed Order of Reference

All personal non-public information has been redacted from the attached supporting documents.

3. This residential mortgage foreclosure action was commenced by filing the summons and complaint in the [*County Name*] County Clerk's office on [*Date*] in the County where the mortgaged property is located. The action was brought to foreclose a residential mortgage executed by [*List Mortgagors, Explain Mortgage and Note/CEMA as applicable.*]

4. On [*Date*], Plaintiff filed a notice of pendency in accordance with RPAPL §1331 and CPLR Article 65, a copy of which is attached hereto as exhibit _____. [*Add if notice of pendency expired: On [Date] Plaintiff re-filed the notice of pendency in accordance with RPAPL §1331 and CPLR Article 65.*]

5. The summons, complaint and notice of pendency are in the form prescribed by statute and contain all the particulars required by law. The summons complies with the requirements of RPAPL §1320, contains the required notice in boldface type and is in the format required by statute. According to the affidavit of service, the summons was served together with the complaint. Copies of the summons, complaint, notice of pendency and affidavits of service are attached hereto as exhibits _____.

6. On [*Date Action Filed*], Plaintiff was [*Specify Holder, Assignee, Transferee, etc.*] of the subject note.

7. [*If Requesting a Substitution*] Since the commencement of this action the

underlying note and mortgage were validly assigned from Plaintiff to [*Current Owner and Holder*] by allonge and physical delivery of the Note and by Assignment of Mortgage. Said assignment was executed on [*Date*] and recorded with the Office of the City Register, [*County Name*] County Office under City Register File No. [*Insert File Number*] on [*Date*]. A copy of said assignment is attached hereto as exhibit D.

8. The [certificate of merit required pursuant to CPLR 3012-b] OR [attorney affirmation required pursuant to Administrative Order 4311/11] was filed together with supporting documents and is attached hereto as exhibit _____.

9. [*If Applicable*] Pursuant to CPLR 3408 the court held a mandatory settlement conference in this action. [*Choose a or b*]:

- a. A settlement was not reached and the case was released from the settlement conference part on [*Date*].
- b. Plaintiff attended a settlement conference on [*Date*] but the defendant mortgagor(s) failed to appear and the case was released from the settlement conference part.

10. [*If Applicable*] The defendant(s)/ mortgagor(s) is/are not resident(s) of the property subject to foreclosure.

11. Defendant(s) were served with the notice required by RPAPL §1303 printed on colored paper together with the summons and complaint printed on white paper. The RPAPL §1303 notice complies with the requirements of that statute, with the title in bold, 20-point type and the text in bold, 14-point type. The RPAPL §1303 notice was delivered to the mortgagors on its own separate page, together with the summons and complaint. Copies of such notice and affidavits of service are attached hereto as exhibits _____.

12. Plaintiff served an additional copy of the summons in compliance with CPLR 3215(g)(3). The affidavit of service by mail is attached hereto as exhibit _____.

13. *[Choose a or b]*

a. Defendants captioned as “John Doe” are not necessary parties. Accordingly, the defendants captioned as “John Doe” were not served with copies of the summons and complaint. Plaintiff requests that the “John Doe” defendants be excised from the caption of the action without prejudice to any of the proceedings herein.

b. Tenants reside at the mortgaged property. Therefore, Plaintiff requests that *[Names of Tenant(s) Residing at Mortgaged Property]* be added as named defendants in this action pursuant to RPAPL §1311 and that the caption be amended to add *[Names of Tenant(s) Residing at Mortgaged Property]* in place of the “John Doe” defendants as party defendants to this action.

14. The following defendant(s) did not answer or appear and their time to answer has expired: *[Insert Names]*. Accordingly, these defendants are in default.

15. No defendant is an infant. No defendant is in the armed services of the United States of America. Upon information and belief no defendant is incompetent. The following defendants were served out of state: *[insert names]*. *[Add facts and relief requested if any defendant is an infant, in the armed services, or incompetent, as applicable]*.

16. *[Include any additional request for relief here]*.

17. Plaintiff has not made any previous motion for this or like relief [-OR- Plaintiff’s previous motion dated *[Date]* for this relief was *[Denied/Declined/Withdrawn]* by order dated *[Date, Attach prior motions/orders as exhibits]*.

18. Therefore, it is respectfully requested that the Court grant Plaintiff’s motion for a

Default Judgment and Order of Reference in accordance with RPAPL §1321 [*Include Request for Additional Relief*] and award such other and further relief as the Court may deem just and proper.

WHEREFORE, Plaintiff requests an order from this Court:

- A. Appointing a referee to compute the amount due Plaintiff and to examine whether the mortgaged property known as [*Insert Street Address*] can be sold in parcels, and make his/her computation and report with all convenient speed pursuant to RPAPL §1321;
- B. Removing “John Doe” as a party Defendant to this action [*-OR- adding names of tenants or others to be added as defendants*];
- C. [*If Requesting a Substitution*] Substituting [*New Note Holder*] into the caption in the place and stead of Plaintiff, and, following such substitution, that the Clerk of the Court amend the docket and electronic docket of the Court accordingly;
- D. Determining all non-appearing and non-answering Defendants to be in default;
- E. [*Include request for additional relief if applicable*];
- F. Granting such additional relief as the Court may deem just and proper.

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

DATED:

[*County*], New York

[*Attorney's name*]

[*Attorney's name*], Esq. an attorney at law licensed to practice in the State of New York, and the attorney for Plaintiff in this action, hereby certifies that, to the best of his/her knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of this pleading, affidavit (or motion if applicable), and the contentions contained herein are not frivolous as defined by 22 NYCRR 130-1.1(c).

[*Attorney's name*]

ATTORNEY'S AFFIRMATION

The undersigned, _____, Esq., pursuant to CPLR 2106 and under penalties of perjury affirms as follows:

That he/she is the attorney of record for Plaintiff in the above-captioned action, that the foregoing disbursements have been incurred in this action and are reasonable in amount, and that the copies of documents or papers charged for herein were actually and necessarily obtained.

DATED:

[*County*], New York

[*Attorney's name*]

[*Law Firm*]

Attorneys for Plaintiff [*Name of Plaintiff*]

[*Address*]

[*Telephone*]

At Part ____ of the Supreme Court held in the County of _____, at the _____ Courthouse thereof, on the _____ day of _____, 20 _____.

PRESENT: _____
JUSTICE OF THE SUPREME COURT

-----X

INDEX NO.:

Plaintiff(s),

**ORDER OF REFERENCE AND
DEFAULT JUDGMENT**

v.

Defendant(s).

MORTGAGED PROPERTY:
COUNTY:
SBL #:

-----X

UPON the Summons, Complaint, and Notice of Pendency filed in this action on the [Day] day of [Month], [Year], the Notice of Motion dated [date], the affirmation of [Plaintiff's Counsel], and the exhibits annexed thereto, the affidavit of merit and amount due by [Name of AOM Signor] who is [AOM Signor's title] of [Name of Company AOM Signor Works For], duly sworn to on [Date AOM Signed], together with the exhibits attached thereto, and all prior papers filed in this action and prior proceedings had herein; and

UPON proof that each of the defendants herein has been duly served with the Summons and Complaint in this action and required notices; and

UPON a Notice of Appearance by [list defendants that filed a notice of appearance];

[If Applicable] AND the court having held a mandatory settlement conference pursuant to

CPLR 3408 [Choose a or b]:

- a. A settlement was not reached and the case was released from the settlement conference part on [date].

b. Plaintiff attended a settlement conference on [Date] but the defendant mortgagor(s) failed to appear and the case was released from the settlement conference part;

[If Applicable] AND it appearing that the defendant(s)/ mortgagor(s) is/are not resident(s) of the property subject to foreclosure;

AND it appearing that [List Defaulting Defendants] time to answer the complaint has expired; and

AND it appearing to the satisfaction of this court that this action was brought to foreclose a mortgage on real property located at [Property Address], in the County of [County Name], State of New York [Section __, Block __, Lot __],

NOW, on motion by [Law Firm Name], attorney for the Plaintiff, it is hereby

ORDERED that defendant(s) [list defendants] are determined to be in default; and it is further

ORDERED that [Name of Referee] with an address of [Referee's Address], is hereby appointed Referee, in accordance with RPAPL §1321, to compute the amount due to Plaintiff and to examine whether the mortgaged property may be sold in parcels; and it is further

ORDERED that the Referee make his/her computation and report with all convenient speed; and it is further

ORDERED that, if necessary, the Referee may take testimony pursuant to RPAPL §1321; and it is further

ORDERED that by accepting this appointment the Referee certifies that he/she is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to §36.2 (c) ("Disqualifications from appointment"), and §36.2 (d) ("Limitations on

appointments based upon compensation”), and, if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall immediately notify the Appointing Judge; and it is further

ORDERED that, pursuant to CPLR 8003(a), the statutory fee of \$50.00, and in the discretion of the court, a fee of \$_____, shall be paid to the Referee for the computation of the amount due and upon the filing of his/her report and the Referee shall not request or accept additional compensation for the computation unless it has been fixed by the court in accordance with CPLR 8003(a); and it is further

ORDERED that the Referee is prohibited from accepting or retaining any funds for him/herself or paying funds to him/herself without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

ORDERED [if any tenants or other defendants are being added to the caption reflect that here and in the caption below; -OR-] that “John Doe” be removed as a party defendant in this action as no occupants reside at the property and the caption of this action be amended to reflect the removal of “John Doe” as a party defendant; and it is further

[If applicable] ORDERED that [New Note Holder] be substituted into the caption in the place and stead of Plaintiff, and, following such substitution, that the Clerk of the Court amend the docket and electronic docket accordingly; and it is further

ORDERED that the caption shall read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF

-----X

Plaintiff(s),

INDEX NO:

v.

MORTGAGED PROPERTY:

COUNTY:

SBL#:

Defendant(s).

-----X

And it is further

ORDERED that Plaintiff shall serve a copy of this Order with notice of entry on all parties and persons entitled to notice, including the Referee appointed herein.

This constitutes the decision and order of the court.

DATED: _____

ENTER:

J.S.C.

EXHIBIT C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF

-----X

Plaintiff(s),

INDEX NO.:

**NOTICE OF MOTION TO
CONFIRM REFEREE REPORT
AND FOR A JUDGMENT OF
FORECLOSURE AND SALE**

v.

Defendant(s).

MORTGAGED PROPERTY:
COUNTY:
SBL #:

-----X

PLEASE TAKE NOTICE that, upon the affirmation of [Attorney Name] dated [Date], the affidavit of [Name of Bank Representative], sworn to [Date], the exhibits attached thereto, and all prior proceedings in this case, Plaintiff [Name of Plaintiff] will move this court at [Insert Date and Time] before [Insert Appropriate Part of Court], at the Supreme Court, [Insert County Name] County, [Insert Court Address], or as soon thereafter as the parties may be heard, for an order:

1. Confirming the Referee's Report made in accordance with RPAPL §1321;
2. Granting a Judgment of Foreclosure and Sale pursuant to RPAPL §1351;
3. Directing the distribution of the sale proceeds pursuant to RPAPL §1354, and
4. Such additional relief as this court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR 2214(b), answering papers and notice of cross-motion, with supporting papers, if any, must be served upon the undersigned at least seven (7) days prior to the return date of this motion.

DATED:

[County], New York

[Attorney Name]
[Law Firm]
Attorneys for Plaintiff [Name of Plaintiff]
[Address]
[Telephone]

TO: [All Defendants must be noticed and their addresses listed here]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF

-----X

Plaintiff(s),

INDEX NO.:

**ATTORNEY AFFIRMATION IN
SUPPORT OF PLAINTIFF'S
MOTION TO CONFIRM
REFEREE REPORT AND FOR A
JUDGMENT OF FORECLOSURE
AND SALE**

v.

Defendant(s).

MORTGAGED PROPERTY:
COUNTY:
SBL #:

-----X

[Attorney's Name], pursuant to CPLR 2106 and under penalties of perjury, hereby affirms
as follows:

1. I am an attorney at law and a[n] [Partner, Of Counsel, Associate] of [Name of Law Firm], the attorneys of record for Plaintiff [Name of Plaintiff]. I am fully familiar with the facts, court papers, and proceedings of this action based upon a review of the file maintained by my office.

2. This is a foreclosure action. The Plaintiff is moving the court to confirm the Referee's Report made in accordance with RPAPL §1321 and for a Judgment of Foreclosure and Sale pursuant to RPAPL §1351 that directs the distribution of the proceeds of sale in accordance with RPAPL §1354.

3. True and accurate copies of the following documents are attached hereto:

<u>Document</u>	<u>Tab</u>
Affirmation pursuant to Admin Order 431/11 or Certificate of Merit	Exhibit A
Note	Exhibit B
Mortgage	Exhibit C
Assignments	Exhibit D
Notice of Default	Exhibit E

RPAPL §1304 90-Day Notice	Exhibit F
Department of Defense Search results	Exhibit G
Summons and Complaint	Exhibit H
Notice of Pendency	Exhibit I
Affidavits of Service	Exhibit J
Affidavit of Service by Mail pursuant to CPLR 3215(g)(3)(iii)	Exhibit K
Affidavit of Merit and Amount Due	Exhibit L
Affirmation of Regularity	Exhibit M
Order of Reference	Exhibit N
Notice of Entry of Order of Reference	Exhibit O
Referee's Oath and Report of Amount Due	Exhibit P
Attorney Fee Affirmation	Exhibit Q
[<i>Power of Attorney with Pooling and Servicing Agreement</i>]	Exhibit R
[<i>Secretary's Certification</i>]	Exhibit S
[<i>Include any additional exhibits here</i>]	Exhibit T

Legalback No. 2 - filed contemporaneously with this application
Costs and Disbursements of Plaintiff with Supporting Invoices

Legalback No. 3 - filed contemporaneously with this application
Proposed Judgment of Foreclosure and Sale

PROCEDURAL HISTORY

4. This residential mortgage foreclosure action was commenced by filing the summons and complaint in the [*County Name*] County Clerk's Office on [*Date*], the County where the mortgaged property is located. The action was brought to foreclose a residential mortgage executed by [*List Mortgagors, Explain Mortgage and Note/CEMA as applicable*].

5. On [*Date*], Plaintiff filed a notice of pendency in accordance with RPAPL §1331 and CPLR Article 65, a copy of which is attached hereto as exhibit _____. [*Add if notice of pendency expired: On [Date], Plaintiff re-filed the notice of pendency in accordance with RPAPL §1331 and CPLR Article 65.*]

6. The summons, complaint, and notice of pendency are in the form prescribed by statute and contain all of the particulars required by law. The summons complies with the requirements of RPAPL §1320, contains the required notice in boldface type and is in the format

required by statute.

7. On [Date Action Filed], Plaintiff was [Specify Holder, Assignee, Transferee] of the subject note.

8. The [certificate of merit pursuant to CPLR 3012-b] OR [attorney affirmation required pursuant to Administrative Order 4311/11] was filed with supporting documents and is attached hereto as exhibit _____.

9. According to the affidavit of service filed in the [County Name] County Clerk's Office, the summons was served with the complaint. Defendant(s) were served with the notice required by RPAPL §1303 printed on colored paper together with the summons and complaint printed on white paper. The RPAPL §1303 notice complies with the requirements of that statute, with the title in bold, 20-point type and the text in bold, 14-point type. The RPAPL §1303 notice was delivered to the mortgagors on its own separate page, together with the summons and complaint.

10. Plaintiff served defendants with copies of the summons in compliance with CPLR 3215(g)(3). The affidavit of service by mail pursuant to CPLR §3215(g)(3) is attached hereto as exhibit _____. Plaintiff served defendants with an additional copy of the summons in compliance with CPLR 3215(g)(3)(iii). Copies of the affidavits of service and mailing are attached hereto as exhibits _____.

11. No defendant is an infant. No defendant is in the armed services of the United States of America. Upon information and belief, no defendant is incompetent. The following defendants were served out of state: [insert names]. [Add facts and relief requested if any defendant is an infant, in the armed services, or incompetent, as applicable].

12. [Add if no answer was filed: Per this Court's Order of Reference, defendant(s)]

_____ were deemed to be in default.]

13. [If Applicable] Pursuant to CPLR 3408 the court held a mandatory settlement conference in this action. [Choose a or b]:

- a. A settlement was not reached and the case was released from the settlement conference part on [date].
- b. Plaintiff attended a settlement conference on [date] but the defendant mortgagor(s) failed to appear and the case was released from the settlement conference part.

14. [If Applicable] The defendant(s)/ mortgagor(s) is/are not resident(s) of the property subject to foreclosure.

15. On [Date], the Plaintiff moved for an Order of Reference. Plaintiff's motion was granted by the Court by order dated [Date]. A copy of the Order of Reference is attached hereto.

16. [If applicable: Plaintiff mailed Notice of Entry of the Order of Reference to defendant(s) or their attorney(s) on [Date] and filed the Notice of Entry with the [County Name] County Clerk on [Date]. A copy of the Notice of Entry is attached hereto as exhibit __.]

17. This court appointed [Name of Referee] as Referee to compute the amount due the Plaintiff and to examine and report whether the mortgaged property can be sold in parcels.

18. On [Date], the Referee executed an Oath and Report of Amount Due which computed the amount due the Plaintiff to be \$ _____ as of [Date], and determined that the property should be sold as one parcel. The Referee's Oath and Report are attached hereto as exhibit P. Plaintiff is entitled to interest at the note rate until the Judgment of Foreclosure and Sale is entered and at the statutory default rate thereafter.

19. No previous motion for a Judgment of Foreclosure and Sale has been made.

[-OR- Explain any prior applications or motions and the resulting outcome, and attach any prior orders as exhibits.]

PLAINTIFF IS ENTITLED TO A JUDGMENT OF FORECLOSURE AND SALE.

20. In conjunction with the motion for an Order of Reference previously granted by this Court, Plaintiff established all the required elements for a foreclosure. Plaintiff now requests that the property be sold pursuant to RPAPL §1351 and that the sale proceeds be distributed in accordance with RPAPL §1354.

21. RPAPL §1354(2) requires the Referee conducting the sale to pay out of the proceeds all taxes, assessments, and water rates that are liens upon the property and to redeem the property from any sales for unpaid taxes, assessments, or water rates that have not become absolute. At the time of sale, transfer tax is not a lien upon the property nor is it an expense of sale, as that term is used in RPAPL §1354(1). Rather, transfer tax is an expense of recording the deed. All expenses of recording the Referee's Deed, including real property transfer tax should be paid by the purchaser at the closing and not by the Referee from sale proceeds.

22. Plaintiff is entitled to a Judgment that includes reimbursement for Plaintiff's attorney fees for this action in accordance with the terms of the note and mortgage. A detailed affirmation regarding attorney fees is attached hereto as exhibit _____.

23. Plaintiff is also entitled to a Judgment that include reimbursement for Plaintiff's costs, allowances, and disbursements in this matter in accordance with the terms of the note and mortgage and CPLR Article 83. A detailed statement of Plaintiff's costs and disbursements with the supporting invoices was filed contemporaneously with this motion.

24. *[Set forth any additional relevant information here.]*

25. A proposed Judgment of Foreclosure and Sale has been provided to the Court

together with this motion.

WHEREFORE, Plaintiff requests an order from this Court:

- A. Confirming the Referee's Report;
- B. Granting a Judgment of Foreclosure and Sale which appoints a Referee to sell the property;
- C. Directing the distribution of the sale proceeds;
- D. [Include Request for Additional Relief, if Applicable];
- E. Such additional relief as this court may deem just and proper.

Dated: _____
[County], New York

[Attorney's name]

[Attorney's Name], Esq., an attorney at law licensed to practice in the State of New York, and the attorney for Plaintiff in this action hereby certifies that, to the best of his/her knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of this pleading, affidavit (or motion if applicable), and the contentions contained herein are not frivolous as defined by 22 NYCRR 130-1.1(c).

[Attorney's name]

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF

-----X

Plaintiff(s),

v.

Defendant(s).

-----X

COSTS OF PLAINTIFF

INDEX NO.:

MORTGAGED PROPERTY:

COUNTY:

SBL #:

COSTS

Costs before Note of Issue - CPLR 8201(1)	\$200.00
Allowance by statute - CPLR 8302(a)(b)	\$ _____
First \$200.00 at 10%	\$20.00
Next \$800.00 at 5%	\$40.00
Next \$2000.00 at 2%	\$40.00
Next \$5000.00 at 1%	\$50.00
	\$150.00
Additional allowance - CPLR 8302(d)	\$50.00
Discretionary costs on motion - CPLR 8303(a)(1)	\$ _____

FEES AND DISBURSEMENTS

Fee for index number -	CPLR 8018(a)	\$ _____
Referee's fee to compute, per order of the court - ...	CPLR 8003(a)	\$ _____
Paid for searches -	CPLR 8301(a)(10)	\$ _____
Serving copy of Summons and Complaint -	CPLR 8301(d)	\$ _____
Reproduction costs -	CPLR 8301(a)(6)	\$ _____
Fees for publication of Summons -	CPLR 8301(a)(3)	\$ _____
Certified copies of papers -	CPLR 8301(a)(4)	\$ _____
Request for judicial intervention -	CPLR 8020(a)	\$ _____
Clerk's fee for filing of Notice of Pendency -	CPLR 8021(a)(10)	\$ _____
Skip trace fees -	CPLR 8301(d)	\$ _____
Motion fees -	CPLR 8020(a)	\$ _____
Note of Issue -	CPLR 8020(a)	\$ _____
Total		\$ _____

ATTORNEY'S AFFIRMATION

The undersigned, _____, Esq., pursuant to CPLR 2106 and under penalties of perjury affirms as follows:

That he/she is the attorney of record for the Plaintiff in the above-captioned action, that the foregoing disbursements have been incurred in this action and are reasonable in amount, and that the copies of documents or papers charged for herein were actually and necessarily obtained.

DATED:

[County], New York

[Attorney's name]

[Law Firm]

Attorneys for Plaintiff [Name of Plaintiff]

[Address]

[Telephone]

At Part ___ of the Supreme Court held in the
County of _____, at the
_____ Courthouse thereof, on the
_____ day of _____,
20____.

PRESENT: _____
JUSTICE OF THE SUPREME COURT

-----X

INDEX NO.:

Plaintiff(s),

**ORDER CONFIRMING REFEREE
REPORT AND JUDGMENT OF
FORECLOSURE AND SALE**

v.

MORTGAGED PROPERTY:

Defendant(s).

SBL #:

-----X

UPON the Summons, Complaint, and Notice of Pendency filed in this action on the
[Day] day of [Month], [Year], the Notice of Motion dated [Date], the affirmation by [Plaintiff's
Counsel], Esq., the affidavit of merit and amount due by [Name of AOM Signor] who is [AOM
Signor's Title] of [Name of Company AOM Signor Works For], duly sworn to on [Date AOM
Signed], together with the exhibits annexed thereto, all in support of Plaintiff's motion for a
Judgment of Foreclosure and Sale; and

UPON proof that each of the defendants herein has been duly served with the Summons
and Complaint in this action, and has voluntarily appeared either personally or by an attorney
[-OR- has not served any answer to the Complaint or otherwise appeared, nor had their time to
do so extended; and it appearing that more than the legally required number of days has elapsed
since defendants [List Defaulting Defendants] were so served and/or appeared]; and Plaintiff
having established to the court's satisfaction that a judgment against defendants is warranted;
and

UPON the affidavit of mailing reflecting compliance with CPLR 3215(g)(3)(iii); and

UPON proof that non-appearing defendants [*List Names*] are not absent, in accordance with RPAPL §1321(2); and

A Referee having been appointed to compute the amount due to Plaintiff upon the bond/note and mortgage set forth in the Complaint and to examine whether the mortgaged property can be sold in parcels; and

UPON reading and filing the Report of [*Name of Referee*] dated [*date*], showing the sum of \$ _____ due as of the date of said Report and that the mortgaged property may not be sold in parcels; and

UPON proof of due notice of this motion upon all parties entitled to receive same, and upon all the prior proceedings and papers filed herein;

NOW, on motion by [*Attorney's Name*], Esq., attorney for the Plaintiff, it is hereby

ORDERED, ADJUDGED AND DECREED that the motion is granted; and it is further

ORDERED, ADJUDGED AND DECREED that the Referee's Report be, and the same is, hereby in all respects ratified and confirmed; and it is further

ORDERED, ADJUDGED AND DECREED, that the mortgaged property described in the Complaint and as hereafter described, or such part thereof as may be sufficient to discharge the mortgage debt, the expenses of the sale, and the costs of this action as provided by the RPAPL be sold, within 90 days of the date of this Judgment, in one parcel, at a public auction at the [*Location/Address, and to the extent possible, Date/Time*] by and under the direction of [*Name of Referee, Address, Telephone*] who is hereby appointed Referee for that purpose; that said Referee give public notice of the time and place of sale in accordance with RPAPL §231 in [*Names of Authorized Publications*]; and it is further

ORDERED, ADJUDGED AND DECREED that by accepting this appointment, the Referee certifies that he/she is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to §36.2 (c) (“Disqualifications from appointment”) and §36.2 (d) (“Limitations on appointments based upon compensation”); and, if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall immediately notify the Appointing Judge; and it is further

ORDERED, ADJUDGED AND DECREED that the Referee is prohibited from accepting or retaining any funds for him/herself or paying funds to him/herself without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

ORDERED, ADJUDGED AND DECREED that the Referee shall conduct the foreclosure sale only if Plaintiff, its successors and/or assignees, or its representative is present at the sale or the Referee has received a written bid and Terms of Sale from Plaintiff, its successors and/or assigns, or its representative; and it is further

ORDERED, ADJUDGED AND DECREED that if the Referee does not conduct the sale within 90 days of the date of the judgment, in accordance with CPLR 2004, the time fixed by RPAPL §1351(1) is extended for the Referee to conduct the sale as soon as reasonably practicable; and it is further

ORDERED, ADJUDGED AND DECREED that at the time of sale the Referee shall accept a written bid from the Plaintiff or the Plaintiff’s attorney, just as though Plaintiff were physically present to submit said bid; and it is further

ORDERED, ADJUDGED AND DECREED that the Referee shall accept the highest bid offered by a bidder who shall be identified upon the court record, and shall require that the successful bidder immediately execute Terms of Sale for the purchase of the property, and pay to

the Referee, in cash or certified or bank check, ten percent (10%) of the sum bid, unless the successful bidder is Plaintiff in which case no deposit against the purchase price shall be required; and it is further

ORDERED, ADJUDGED AND DECREED that, in the event the first successful bidder fails to execute the Terms of Sale immediately following the bidding upon the subject property or fails to immediately pay the ten percent (10%) deposit as required, the property shall immediately and on the same day be reoffered at auction; and it is further

ORDERED, ADJUDGED AND DECREED that the Referee shall then deposit the down payment and proceeds of sale, as necessary, in [*Name of Depository*] in his/her own name as Referee, in accordance with CPLR 2609; and it is further

ORDERED, ADJUDGED AND DECREED that after the property is sold, the Referee shall execute a deed to the purchaser, in accordance with RPAPL §1353 and the terms of sale, which shall be deemed a binding contract; and it is further

ORDERED, ADJUDGED AND DECREED that, in the event a party other than the Plaintiff becomes the purchaser at the sale, the closing of title shall be held no later than 30 days after the date of such sale unless otherwise stipulated by all parties to the sale; and it is further

ORDERED, ADJUDGED AND DECREED that, if Plaintiff (or its affiliate, as defined in paragraph (a) of subdivision 1 of section six-1 of the Banking Law) is the purchaser, such party shall place the property back on the market for sale or other occupancy: (a) within 180 days of the execution of the deed of sale, or (b) within 90 days of completion of construction, renovation, or rehabilitation of the property, provided that such construction, renovation, or rehabilitation proceeded diligently to completion, whichever comes first, provided however, that a court of competent jurisdiction may grant an extension for good cause; and it is further

ORDERED, ADJUDGED AND DECREED that the Referee, on receiving the proceeds of such sale, shall forthwith pay therefrom, in accordance with their priority according to law, all taxes, assessments, sewer rents, or water rates, which are, or may become, liens on the property at the time of sale, with such interest or penalties which may have lawfully accrued thereon to the date of payment; and it is further

ORDERED, ADJUDGED AND DECREED, that the Referee then deposit the balance of said proceeds of sale in her/his own name as Referee in [*Name of Depository*], and shall thereafter make the following payments in accordance with RPAPL §1354, as follows:

FIRST: The Referee's statutory fees for conducting the sale, in accordance with CPLR 8003(b), not to exceed \$500.00 unless the property sells for \$50,000.00 or more [-OR- *in the event a sale was cancelled or postponed*, Plaintiff shall compensate the Referee in the sum of \$_____ for each adjournment or cancellation, unless the Referee caused the delay];

SECOND: All taxes, assessments, and water rates that are liens upon the property and monies necessary to redeem the property from any sales for unpaid taxes, assessments, or water rates that have not become absolute, and any other amounts due in accordance with RPAPL §1354(2). Purchaser shall be responsible for interest and penalties due on any real property taxes accruing after the sale. The Referee shall not be responsible for the payment of penalties or fees pursuant to this appointment. The Purchaser shall hold the Referee harmless from any such penalties or fees assessed;

THIRD: The expenses of the sale and the advertising expenses as shown on the bills presented and certified by said Referee to be correct, duplicate copies

of which shall be annexed to the report of sale;

FOURTH: The Referee shall then pay to the Plaintiff or its attorney the following:

Amount Due per Referee's Report: [\$ _____ with interest at the note rate from [Date] until [Date], together with any advances as provided for in the note and mortgage which Plaintiff has made for taxes, insurance, principal, and interest, and any other charges due to prior mortgages or to maintain the property pending consummation of this foreclosure sale, not previously included in the computation, upon presentation of receipts for said expenditures to the Referee, all together with interest thereon pursuant to the note and mortgage, and then with interest from [Date] at the statutory judgment rate until the date the deed is transferred] -OR- [\$ _____ with interest at the statutory rate from [date], the date of acceleration];

Costs and Disbursements: \$ _____ adjudged to the Plaintiff for costs and disbursements in this action, with interest at the statutory judgment rate from the date of entry of this judgment;

Additional Allowance: \$ _____ is hereby awarded to Plaintiff in addition to costs, with interest at the statutory judgment rate from the date of entry of this judgment, pursuant to CPLR Article 83;

Attorney Fees: \$ _____ is hereby awarded to Plaintiff as reasonable legal fees herein, with interest at the statutory rate from the date of entry of this judgment;

FIFTH: Surplus monies arising from the sale shall be paid into court by

the officer conducting the sale within five days after receipt in accordance with RPAPL §1354(4) and in accordance with local County rules regarding Surplus Monies; and it is further

ORDERED, ADJUDGED AND DECREED that if the Plaintiff is the purchaser of the property, or in the event that the rights of the purchasers at such sale and the terms of sale under this judgment shall be assigned to and be acquired by the Plaintiff, and a valid assignment thereof is filed with said Referee, said Referee shall not require Plaintiff to pay in cash the entire amount bid at said sale, but shall execute and deliver to the Plaintiff or its assignee, a deed or deeds of the property sold upon the payment to said Referee of the amounts specified in items marked "First", "Second", and "Third" above; that the Referee shall allow the Plaintiff to pay the amounts specified in "Second" and "Third" above when it is recording the deed; that the balance of the bid, after deducting the amounts paid by the Plaintiff, shall be applied to the amount due Plaintiff as specified in paragraph "Fourth" above; that Plaintiff shall pay any surplus after applying the balance of the bid to the Referee, who shall deposit it in accordance with paragraph "Fifth" above; and it is further

ORDERED, ADJUDGED AND DECREED that all expenses of recording the Referee's deed, including real property transfer tax, which is not a lien upon the property at the time of sale, shall be paid by the purchaser, not by the Referee from sale proceeds, and that any transfer tax shall be paid in accordance with Tax Law §1404; and it is further

ORDERED, ADJUDGED AND DECREED that if the sale proceeds distributed in accordance with paragraphs "First," "Second," "Third", and "Fourth" above are insufficient to pay Plaintiff the Amount Due per the Referee's Report as set forth in paragraph "Fourth" above, Plaintiff may seek to recover a deficiency judgment in accordance with RPAPL §1371 if

permitted by law; and it is further

ORDERED, ADJUDGED AND DECREED that the mortgaged property is to be sold in one parcel in “as is” physical order and condition, subject to any condition that an inspection of the property would disclose; any facts that an accurate survey of the property would show; any covenants, restrictions, declarations, reservations, easements, right of way, and public utility agreements of record, if any; any building and zoning ordinances of the municipality in which the mortgaged property is located and possible violations of same; any rights of tenants or persons in possession of the subject property; prior liens of record, if any, except those liens addressed in RPAPL §1354; any equity of redemption of the United States of America to redeem the property within 120 days from the date of sale; and any rights pursuant to CPLR 317, 2003, and 5015, or any appeal of the underlying action or additional litigation brought by any defendant or its successor or assignee contesting the validity of this foreclosure; and it is further

ORDERED, ADJUDGED AND DECREED that the purchaser be let into possession of the property on production of the Referee’s Deed; and it is further

ORDERED, ADJUDGED AND DECREED that the Defendants in this action and all persons claiming through them and any person obtaining an interest in the property after the filing of the Notice of Pendency are barred and foreclosed of all right, claim, lien, title, and interest in the property after the sale of the mortgaged property; and it is further

ORDERED, ADJUDGED AND DECREED that within 30 days after completing the sale and executing the proper conveyance to the purchaser, unless the time is extended by the court, the officer making the sale shall file with the clerk a report under oath of the disposition of the proceeds of the sale in accordance with RPAPL §1355(1) and follow all local County rules regarding handling of Surplus Monies; and it is further

ORDERED, ADJUDGED AND DECREED that if the purchaser or purchasers at said sale default(s) upon the bid and/or the terms of sale the Referee may place the property for resale without prior application to the Court unless Plaintiff's attorneys shall elect to make such application; and it is further

ORDERED, ADJUDGED AND DECREED that Plaintiff shall serve a copy of this Judgment with Notice of Entry upon the owner of the equity of redemption, any tenants named in this action, and any other parties or persons entitled to service, including the Referee appointed herein; and it is further

ORDERED, ADJUDGED AND DECREED that nothing herein shall be deemed to relieve Plaintiff of any obligation imposed by RPAPL §1307 and RPAPL §1308 to secure and maintain the property until such time as ownership of the property has been transferred and the deed duly recorded; and it is further

ORDERED, ADJUDGED AND DECREED that, when the Referee files a report of sale, he or she shall concurrently file a Foreclosure Actions Surplus Monies Form; and it is further

ORDERED, ADJUDGED AND DECREED that to ensure compliance herewith, Plaintiff shall file a written report with the court within six months from the date of entry of this judgment stating whether the sale has occurred and the outcome thereof.

Said property is commonly known as [*Street Address*].

The legal description of the mortgaged property referred to herein is annexed hereto as Schedule A [*If provided by Plaintiff, attach legal description as set forth on deed or mortgage*].

[*Attach Terms of Sale*]

DATED: _____

ENTER:

J.S.C.

EXHIBIT D

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF

-----X

INDEX NO.:

Plaintiff(s),

**NOTICE OF MOTION FOR A
DEFAULT JUDGMENT, ORDER OF
REFERENCE, AND JUDGMENT OF
FORECLOSURE AND SALE**

v.

MORTGAGED PROPERTY:

COUNTY:

SBL#:

Defendant(s).

-----X

PLEASE TAKE NOTICE that, upon the affirmation of [Attorney Name] dated [Date], the affidavit of [Name of Bank Representative], sworn to [Date], the exhibits attached thereto, and all prior proceedings in this case, Plaintiff [Name of Plaintiff] will move this court at [Insert Date and Time] before [Insert Appropriate Part of Court], at the Supreme Court, [Insert County Name] County, [Insert Court Address], or as soon thereafter as the parties may be heard, for an order:

1. Declaring that all non-appearing and non-answering defendants are in default pursuant to CPLR 3215;
2. Determining the amount due to Plaintiff in accordance with RPAPL §1321;
3. Granting a judgment of foreclosure and sale pursuant to RPAPL §1351;
4. Appointing a referee to conduct an auction sale pursuant to applicable law;
5. Directing the distribution of the sale proceeds pursuant to RPAPL §1354;
6. [Choose One] Adding names of tenant(s) residing at mortgaged property as named defendants pursuant to RPAPL §1311, amending the caption to add [Names of Tenant(s) Residing at Mortgaged Property as Defendants], and removing "John Doe" as a party defendant in this action -OR- Removing "John Doe" as a party defendant in

this action as no tenants reside at the property and amending the caption to reflect the removal of “John Doe” as a party defendant;

7. *[If Requesting a Substitution]* Substituting *[New Note Holder]* into the caption in the place and stead of Plaintiff, and, following such substitution, that the Clerk of the Court be directed to amend the docket and electronic docket of the Court accordingly;
8. Such additional relief as the Court may deem just and proper.

[Add any additional requests for relief here]

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR 2214(b), answering papers, if any, are to be served upon the undersigned no later than seven (7) days prior to the return date of the within motion.

DATED: _____
[County], New York

_____, Esq.
[Attorney's Name]
[Law Firm]
Attorneys for Plaintiff [Name of Plaintiff]
[Address]
[Telephone]

TO: [All Defendants must be noticed and their addresses listed here]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF

-----X

Plaintiff(s),

v.

INDEX NO.:

**AFFIRMATION IN SUPPORT OF
PLAINTIFF'S MOTION FOR A
DEFAULT JUDGMENT, ORDER OF
REFERENCE, AND JUDGMENT OF
FORECLOSURE AND SALE**

MORTGAGED PROPERTY:
COUNTY:
SBL#:

Defendant(s)

-----X

[Attorney's name], pursuant to CPLR 2106 and under the penalties of perjury, affirms as follows:

1. I am an attorney at law and a[n] [Partner, Of Counsel, Associate] with [Name of Law Firm] the attorneys of record for Plaintiff [Name of Plaintiff]. I am fully familiar with the facts, court papers and proceedings of this action based upon a review of the file maintained by my office.

2. True and accurate copies of the following documents are attached hereto:

<u>Document</u>	<u>Tab</u>
Affirmation pursuant to Admin Order 431/11 or Certificate of Merit	Exhibit A
Note	Exhibit B
Mortgage	Exhibit C
Assignments	Exhibit D
Notice of Default	Exhibit E
RPAPL §1304 90 Day Notice	Exhibit F
Department of Defense Search results	Exhibit G
Summons and Complaint	Exhibit H
Notice of Pendency	Exhibit I
Affidavits of service	Exhibit J
Affidavit of Service by Mail pursuant to CPLR 3215(g)(3)(iii)	Exhibit K
Affidavit of Merit and Amount Due	Exhibit L
Affirmation of Regularity	Exhibit M
Attorney Fee Affirmation	Exhibit N
<u>[Power of Attorney with Pooling and Servicing Agreement]</u>	Exhibit O
<u>[Secretary's Certification]</u>	Exhibit P

[Include any additional exhibits here]

Exhibit Q

Legalback No. 2 - filed contemporaneously with this motion
Costs and Disbursements of Plaintiff with Supporting Invoices

Legalback No. 3 - filed contemporaneously with this motion
Proposed Judgment of Foreclosure and Sale

All personal non-public information has been redacted from the attached supporting documents.

3. This residential mortgage foreclosure action was commenced by filing the summons and complaint in the [County Name] County Clerk's office on [Date] in the County where the mortgaged property is located. The action was brought to foreclose a residential mortgage executed by [List Mortgagors, Describe Mortgage and Note/CEMA as applicable.]

4. On [Date], Plaintiff filed a notice of pendency in accordance with RPAPL §1331 and CPLR Article 65, a copy of which is attached hereto as exhibit _____. [*Add if notice of pendency expired: On [Date], Plaintiff re-filed the notice of pendency in accordance with RPAPL §1331 and CPLR Article 65].*

5. The summons, complaint, and notice of pendency are in the form prescribed by statute and contain all of the particulars required by law. The summons complies with the requirements of RPAPL §1320, contains the required notice in boldface type and is in the format required by statute. Copies of the summons, complaint, notice of pendency, and affidavits of service are attached hereto as exhibits _____.

6. On [Date Action Filed], Plaintiff was [Specify Holder, Assignee, Transferee, etc.] of the subject note.

7. The [certificate of merit pursuant to CPLR 3012-b] OR [attorney affirmation required pursuant to Administrative Order 4311/11] was filed with supporting documents and is attached hereto as exhibit _____.

8. *[If Requesting a Substitution]* Since the commencement of this action the underlying note and mortgage were validly assigned from Plaintiff to [Current Owner and Holder] by allonge and physical delivery of the Note and by Assignment of Mortgage. Said assignment was executed on [Date] and recorded with the Office of the City Register, [County Name] County Office under City Register File No. [Insert File Number] on [Date]. A copy of said assignment is attached hereto as Exhibit D.

9. *[If Applicable]* Pursuant to CPLR 3408 the court held a mandatory settlement conference in this action. *[Choose a or b]*:

- a. A settlement was not reached and the case was released from the settlement conference part on [Date].
- b. Plaintiff attended a settlement conference on [Date] but the defendant mortgagor(s) failed to appear and the case was released from the settlement conference part.

10. *[If Applicable]* The defendant(s)/ mortgagor(s) is/are not resident(s) of the property subject to foreclosure.

11. According to the affidavit of service filed in the [County Name] County Clerk's Office, the summons was served with the complaint. Defendant(s) were served with the notice required by RPAPL §1303 printed on colored paper together with the summons and complaint printed on white paper. The RPAPL §1303 notice complies with the requirements of that statute, with the title in bold, 20-point type and the text in bold, 14-point type. The RPAPL §1303 notice was delivered to the mortgagors on its own separate page, together with the summons and complaint. Copies of the notice and affidavits of service are attached hereto as exhibits _____.

12. Plaintiff served defendants with copies of the summons in compliance with CPLR 3215(g)(3). The affidavit of service by mail is attached hereto as exhibit _____.

13. *[Choose a or b]*

- a. Defendants captioned as “John Doe” are not necessary parties. Accordingly, the defendants captioned as “John Doe” were not served with copies of the summons and complaint. Plaintiff requests that the “John Doe” defendants be excised from the caption of the action without prejudice to any of the proceedings herein.
- b. Tenants reside at the mortgaged property. Therefore Plaintiff requests that [Names of Tenant(s) Residing at Mortgaged Property] be added as named defendants in this action pursuant to RPAPL §1311, and that the caption be amended to add [Names of Tenant(s) Residing at Mortgaged Property] in place of the “John Doe” defendants as party defendants to this action.

14. The following defendant(s) did not answer or appear and their time to answer has expired: [Insert Names]. Accordingly, these defendants are in default pursuant to CPLR 3215.

15. No defendant is an infant. No defendant is in the armed services of the United States of America. Upon information and belief, no defendant is incompetent. The following defendants were served out of state: [insert names]. [Add facts if any defendant is an infant, in the armed services, or incompetent.]

16. [Include any additional request for relief here].

17. [If Applicable] Plaintiff hereby waives any deficiency judgment pursuant to RPAPL §1371. Plaintiff has not made any previous motion for this or like relief [-OR- Plaintiff’s previous motion dated [date] for this relief was [denied/declined/withdrawn] by order dated [date, attach prior motions/orders as exhibits].

PLAINTIFF IS ENTITLED TO A JUDGMENT OF FORECLOSURE AND SALE

18. Plaintiff requests that the court grant this judgment on default of defendant(s) [insert names] pursuant to RPAPL §1321, that the mortgaged property be sold pursuant to

RPAPL §1351, and that the sale proceeds be distributed in accordance with RPAPL §1354.

19. RPAPL §1354(2) requires the referee conducting the sale of the mortgaged property to pay out of the sale's proceeds all taxes, assessments, and water rates that are liens upon the property and to redeem the property from any sales for unpaid taxes, assessments, or water rates that have not become absolute. All expenses of recording the Referee's Deed, including real property transfer tax should be paid by the purchaser at the closing and not by the Referee from sale proceeds since transfer tax is not a lien upon the property nor is it an expense of sale, as that term is used in RPAPL §1351(1). Rather, transfer tax is an expense of recording the deed.

20. Plaintiff is entitled to a Judgment that include reimbursement for Plaintiff's attorney fees for this action in accordance with the terms of the note and mortgage. A detailed affirmation regarding attorney fees is attached hereto as exhibit ____ .

21. Plaintiff is also entitled to a Judgment include reimbursement for Plaintiff's costs, allowances, and disbursements in this matter in accordance with the terms of the note and mortgage and CPLR Article 83. A detailed statement of Plaintiff's costs and disbursements with the supporting invoices has been filed contemporaneously with this motion.

22. Plaintiff has not made any previous motion for this or like relief. *[Explain any prior motions and the resulting outcome. Attach prior orders as exhibits.]*

23. A proposed Judgment of Foreclosure and Sale is provided to the Court together with this motion.

WHEREFORE, Plaintiff requests and order of this Court:

- A. Directing the entry of a default judgment against all defendants
- B. Determining the amount due to Plaintiff in accordance with RPAPL §1321;
- C. Granting a judgment of foreclosure and sale pursuant to RPAPL §1351;
- D. Appointing a referee to conduct an auction sale pursuant to applicable law;

- E. Adding names of tenant(s) residing at mortgaged property as named defendants pursuant to RPAPL §1311, amending the caption to add [Names of Tenant(s) Residing at Mortgaged Property as Defendants], and removing “John Doe” as a party defendant in this action] -OR- Removing “John Doe” as a party defendant in this action as no tenants reside at the property and amending the caption to reflect the removal of “John Doe” as a party defendant;
- F. [If Requesting a Substitution] Substituting [New Note Holder] into the caption in the place and stead of Plaintiff, and, following such substitution, that the Clerk of the Court be directed to amend the docket and electronic docket of the Court accordingly;
- G. [Include request for additional relief if applicable];
- H. Such additional relief as this court deems just and proper.

Dated: _____
[County], New York

[Attorney's name]

ATTORNEY'S AFFIRMATION

[Attorney's Name], Esq., an attorney at law licensed to practice in the State of New York, and the attorney for Plaintiff in this action hereby certifies that, to the best of his/her knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of this pleading, affidavit (or motion if applicable), and the contentions contained herein are not frivolous as defined by 22 NYCRR 130-1.1(c).

[Attorney's name]

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF

-----X

v. Plaintiff(s),

COSTS OF PLAINTIFF

INDEX NO.:

MORTGAGED PROPERTY:

COUNTY:

SBL #:

Defendant(s).

-----X

COSTS

Costs before Note of Issue - CPLR 8201(1)	\$200.00
Allowance by statute - CPLR 8302(a)(b)	\$ _____

First \$200.00 at 10%	\$20.00
Next \$800.00 at 5%	\$40.00
Next \$2000.00 at 2%	\$40.00
Next \$5000.00 at 1%	\$50.00

\$150.00

Additional allowance - CPLR 8302(d)	\$50.00
Discretionary costs on motion - CPLR 8303(a)(1)	\$ _____

FEES AND DISBURSEMENTS

Fee for index number -	CPLR 8018(a)	\$ _____
Referee's fee to compute, per order of the court - ...	CPLR 8003(a)	\$ _____
Paid for searches -	CPLR 8301(a)(10)	\$ _____
Serving copy of Summons and Complaint -	CPLR 8301(d)	\$ _____
Reproduction costs -	CPLR 8301(a)(6)	\$ _____
Fees for publication of Summons -	CPLR 8301(a)(3)	\$ _____
Certified copies of papers -	CPLR 8301(a)(4)	\$ _____
Request for judicial intervention	CPLR 8020(a)	\$ _____
Clerk's fee for filing of Notice of Pendency -	CPLR 8021(a)(10)	\$ _____
Skip trace fees -	CPLR 8301(d)	\$ _____
Motion fees -	CPLR 8020(a)	\$ _____
Note of Issue -	CPLR 8020(a)	\$ _____

Total	\$ _____
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ATTORNEY'S AFFIRMATION

The undersigned, _____, Esq., pursuant to CPLR 2106 and under penalties of perjury affirms as follows:

That he/she is the attorney of record for Plaintiff in the above-captioned action, that the foregoing disbursements have been incurred in this action and are reasonable in amount, and that the copies of documents or papers charged for herein were actually and necessarily obtained.

DATED:

[County], New York

[Attorney's name]

[Law Firm]

Attorneys for Plaintiff [Name of Plaintiff]

[Address]

[Telephone]

At Part ____ of the Supreme Court held in
the County of _____ at the
_____ Courthouse thereof, on the
_____ day of _____,
20 _____.

PRESENT: _____
JUSTICE OF THE SUPREME COURT

-----X

INDEX NO.:

Plaintiff(s),

**DEFAULT JUDGMENT AND
JUDGMENT OF FORECLOSURE
AND SALE**

v.

Defendant(s).

MORTGAGED PROPERTY:
COUNTY:
SBL #:

-----X

UPON the Summons, Complaint and Notice of Pendency filed in this action on the [Day] day of [Month], [Year], the Notice of Motion dated [Date], the affirmation of [Attorney's Name] and the exhibits annexed thereto, and upon the affidavit of merit and amount due by [Name of AOM Signor] who is [AOM Signor's Title] of [Name of Company AOM Signor Works for], duly sworn to on [Date AOM Signed]; together with the exhibits attached thereto, all in support of Plaintiff's motion for a Default Judgment and Judgment of Foreclosure and Sale; and

UPON proof this action was brought to foreclose a mortgage on real property located at [Property Address], in the County of [County Name], State of New York [Section __, Block __, Lot __]; and

UPON proof that each of the Defendants herein has been duly served with the Summons and Complaint in this action, and did not answer or otherwise appear, nor had their time to so do extended; and it appearing that more than the legally required number of days had elapsed since said Defendants [List Defaulting Defendants] were so served and/or appeared; and Plaintiff

having established to the court's satisfaction that a judgment against defendants is warranted;

UPON the affidavit of mailing reflecting compliance with CPLR §3215(g)(3)(iii); and

UPON proof that non-appearing defendants [*List Names*] are not absent, in accordance with RPAPL §1321(2); and

[*If Applicable*] AND the court having held a mandatory settlement conference pursuant to CPLR 3408 [*Choose a or b*]:

a. A settlement was not reached and the case was released from the settlement conference part on [*Date*].

b. Plaintiff attended a settlement conference on [*Date*] but the defendant mortgagor(s) failed to appear and the case was released from the settlement conference part;

[*If Applicable*] AND it appearing that the defendant(s)/ mortgagor(s) is/are not resident(s) of the property subject to foreclosure;

[*If Applicable*] AND Plaintiff having waived its right to a deficiency judgment and accepted the sale of the property in full satisfaction of the mortgage debt; and

UPON proof of notice of this motion to all parties and persons entitled thereto;

NOW, on motion by [*Attorney's Name*], Esq., attorney for the Plaintiff, it is hereby

ORDERED, ADJUDGED AND DECREED that the default of all non-appearing defendants is hereby fixed and determined; and it is further

ORDERED, ADJUDGED AND DECREED that, in accordance with the Affidavit of Merit and Amounts Due and Owing dated [*Date*], the sum of \$_____ is awarded to the Plaintiff as of [*Date*]; and it is further

ORDERED, ADJUDGED AND DECREED that the mortgaged property described in the Complaint and as hereafter described, or such part thereof as may be sufficient to discharge the

mortgage debt, the expenses of the sale, and the costs of this action as provided by the RPAPL be sold, within 90 days from the date of this Judgment, in one parcel, at a public auction at the [Location/Address, and to the extent possible, Date/Time], by and under the direction of [Name of Referee, Address, Telephone], who is hereby appointed Referee for that purpose; that said Referee give public notice of the time and place of sale in accordance with RPAPL §231 in [Names of Authorized Publications]; and it is further

ORDERED, ADJUDGED AND DECREED that by accepting this appointment the Referee certifies that he/she is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to §36.2(c) (“Disqualifications from appointment”) and §36.2(d) (“Limitations on appointments based upon compensation”); and if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall immediately notify the Appointing Judge; and it is further

ORDERED, ADJUDGED AND DECREED that the Referee is prohibited from accepting or retaining any funds for him/herself or paying funds to him/herself without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

ORDERED, ADJUDGED AND DECREED that the Referee shall conduct the foreclosure sale only if Plaintiff, its successors and/or assignees, or its representative is present at the sale or the Referee has received a written bid and Terms of Sale from Plaintiff, its successors and/or assigns, or its representative as if Plaintiff were physically present to submit such bid; and it is further

ORDERED, ADJUDGED AND DECREED that if the Referee does not conduct the sale within 90 days of the date of the judgment, in accordance with CPLR 2004, the time fixed by RPAPL §1351(1) is extended for the Referee to conduct the sale as soon as reasonably practicable; and it is further

ORDERED, ADJUDGED AND DECREED that at the time of sale the Referee shall accept a written bid from the Plaintiff or the Plaintiff's attorney, just as though Plaintiff were physically present to submit said bid; and it is further

ORDERED, ADJUDGED AND DECREED that the Referee shall accept the highest bid offered by a bidder who shall be identified upon the court record, and shall require that the successful bidder immediately execute Terms of Sale for the purchase of the property, and pay to the Referee, in cash or certified or bank check, ten percent (10%) of the sum bid, unless the successful bidder is Plaintiff in which case no deposit against the purchase price shall be required; and it is further

ORDERED, ADJUDGED AND DECREED that, in the event the first successful bidder fails to execute the Terms of Sale immediately following the bidding upon the subject property or fails to immediately pay the ten percent (10%) deposit as required, the property shall immediately and on the same day be reoffered at auction; and it is further

ORDERED, ADJUDGED AND DECREED that in the event a party other than the Plaintiff becomes the purchaser at the sale, the closing of title shall be held no later than 30 days after such sale unless otherwise stipulated by all parties to the sale; and it is further

ORDERED, ADJUDGED AND DECREED that, after the property is sold, the Referee shall execute a deed to the purchaser in accordance with RPAPL §1353 and the Terms of Sale, which shall be deemed a binding contract; and it is further

ORDERED, ADJUDGED AND DECREED that if Plaintiff (or its affiliate, as defined in paragraph (a) of subdivision 1 of section six-1 of the Banking Law) is the purchaser, such party shall place the property back on the market for sale or other occupancy: (a) within 180 days of the execution of the deed of sale, or (b) within 90 days of completion of construction, renovation, or rehabilitation of the property, provided that such construction, renovation, or rehabilitation

proceeded diligently to completion, whichever comes first, provided however, that a court of competent jurisdiction may grant an extension for good cause shown; and it is further

ORDERED, ADJUDGED, AND DECREED that the Referee, on receiving the proceeds of such sale, shall forthwith pay therefrom, in accordance with their priority according to law, taxes, assessments, sewer rents, and water rates, which are, or may become, liens on the property at the time of sale, with such interest or penalties which may have lawfully accrued thereon to the date of payment; and it is further

ORDERED, ADJUDGED, AND DECREED, that the Referee shall then deposit the balance of said proceeds of sale in her/his own name as Referee in [*Name of Depository*], and shall thereafter make the following payments in accordance with RPAPL §1354, as follows:

FIRST: The Referee's statutory fees for conducting the sale, in accordance with CPLR 8003(b), not to exceed \$500.00 unless the property sells for \$50,000.00 or more [-OR- *in the event a sale was cancelled or postponed*, Plaintiff shall compensate the Referee in the sum of \$_____ for each adjournment or cancellation, unless the Referee caused the delay];

SECOND: All taxes, assessments, and water rates that are liens upon the property and monies necessary to redeem the property from any sales for unpaid taxes, assessments, or water rates that have not become absolute, and any other amounts due in accordance with RPAPL §1354(2). Purchaser shall be responsible for interest and penalties due on any real property taxes accruing after the sale. The Referee shall not be responsible for the payment of penalties or fees pursuant to this appointment. The Purchaser shall hold the Referee harmless from any such penalties or fees assessed;

THIRD: The expenses of the sale and the advertising expenses as shown

on the bills presented and certified by said Referee to be correct, duplicate copies of which shall be annexed to the report of sale;

FOURTH: The Referee shall then pay to the Plaintiff or its attorney the following:

Judgment Amount: [\$ _____ with interest at the note rate from [Date] until [Date], together with any advances as provided for in the note and mortgage which Plaintiff has made for taxes, insurance, principal, and interest, and any other charges due to prior mortgages or to maintain the property pending consummation of this foreclosure sale, not previously included in the computation, upon presentation of receipts for said expenditures to the Referee, all together with interest thereon pursuant to the note and mortgage, and then with interest from [Date] at the statutory judgment rate until the date the deed is transferred] -OR- [\$ _____ with interest at the statutory rate from [Date], the date of acceleration];

Costs and Disbursements: \$ _____ adjudged to the Plaintiff for costs and disbursements in this action, with interest at the statutory judgment rate from the date of entry of this judgment;

Additional Allowance: \$ _____ is hereby awarded to Plaintiff in addition to costs, with interest at the statutory judgment rate from the date of entry of this judgment, pursuant to CPLR Article 83;

Attorney Fees: \$ _____ is hereby awarded to Plaintiff as reasonable legal fees herein, with interest at the statutory rate from the date of entry of this judgment;

FIFTH: Surplus monies arising from the sale shall be paid into court by

the officer conducting the sale within five days after receipt, in accordance with RPAPL §1354(4) and in accordance with local County rules regarding Surplus Monies; and it is further

ORDERED, ADJUDGED AND DECREED that if the Plaintiff is the purchaser of the property, or in the event that the rights of the purchasers at such sale and the terms of sale under this judgment shall be assigned to and be acquired by Plaintiff, and a valid assignment thereof is filed with said Referee, said Referee shall not require Plaintiff to pay in cash the entire amount bid at said sale, but shall execute and deliver to Plaintiff or its assignee, a deed or deeds of the property sold upon the payment to said Referee of the amounts specified in items marked "First", "Second", and "Third" above; that the Referee shall allow the Plaintiff to pay the amounts in paragraph "Second" and "Third" above when it is recording the deed; that the balance of the bid, after deducting the amounts paid by the Plaintiff, shall be applied to the amount due Plaintiff as specified in paragraph "Fourth" above; that Plaintiff shall pay any surplus after applying the balance of the bid to the Referee, who shall deposit it in accordance with paragraph "Fifth" above; and it is further

ORDERED, ADJUDGED AND DECREED that all expenses of recording the Referee's deed, including real property transfer tax, which is not a lien upon the property at the time of sale, shall be paid by the purchaser, not by the Referee from sale proceeds, that any transfer tax shall be paid in accordance with Tax Law §1404; and it is further

[If Applicable] ORDERED, ADJUDGED AND DECREED that even if the sale proceeds distributed in accordance paragraphs "First," "Second," "Third", and "Fourth" above are insufficient to pay Plaintiff the Amount Due as set forth in paragraph "Fourth" above, Plaintiff has waived and may not seek to recover a deficiency judgment in accordance with RPAPL §1371; and it is further

ORDERED, ADJUDGED AND DECREED that the mortgaged property is to be sold in one parcel in "as is" physical order and condition, subject to any condition that an inspection of the property would disclose; any state of facts that an accurate survey of the property would show; any covenants, restrictions, declarations, reservations, easements, right of way, and public utility agreements of record, if any; any building and zoning ordinances of the municipality in which the mortgaged property is located and possible violations of same; any rights of tenants or persons in possession of the subject property; prior liens or record, if any, except those liens addressed in RPAPL §1354; any equity of redemption of the United State of America to redeem the property within 120 days from the date of sale; and any rights pursuant to CPLR 317, 2003, and 5015, or any appeal of the underlying action or additional litigation brought by any defendant or its successor or assignee contesting the validity of this foreclosure; and it is further

ORDERED, ADJUDGED AND DECREED that the purchaser be let into possession of the property on production of the Referee's Deed; and it is further

ORDERED, ADJUDGED AND DECREED that the Defendants in this action, all persons claiming through them, and any person obtaining an interest in the property after the filing of the Notice of Pendency are barred and foreclosed of all right, claim, lien, title, and interest in the property after the sale of the mortgaged property; and it is further

ORDERED, ADJUDGED AND DECREED that within thirty days after completing the sale and executing the proper conveyance to the purchaser, unless the time is extended by the Court, the officer making the sale shall file with the County Clerk a report under oath of the disposition of the proceeds of the sale in accordance with RPAPL §1355(1) and follow all local County rules regarding handling of Surplus Monies; and it is further

ORDERED, ADJUDGED AND DECREED that if the purchaser or purchasers at said sale default(s) upon the bid and/or the terms of sale the Referee may place the property for resale

without prior application to the court unless Plaintiff's attorneys shall elect to make such application; and it is further

[If Applicable] ORDERED that [New Note Holder] be substituted into the caption in the place and stead of Plaintiff, and, following such substitution, that the Clerk of the Court amend the docket and electronic docket accordingly; and it is further

[If Applicable] ORDERED that the caption shall read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF

-----X
PLAINTIFF

Plaintiff(s),

v.

DEFENDANT

Defendant(s).

-----X

INDEX NO.:

MORTGAGED PROPERTY:

COUNTY:

SBL #:

And it is further

ORDERED, ADJUDGED AND DECREED that Plaintiff shall serve a copy of this Order and Judgment with Notice of Entry upon the owner of the equity of redemption, any tenants named in this action, and any other parties or persons entitled to service, including the Referee appointed herein; and it is further

ORDERED, ADJUDGED AND DECREED that nothing herein shall be deemed to relieve Plaintiff of any obligation imposed by RPAPL §1307 and RPAPL §1308 to secure and maintain the property until such time as ownership of the property has been transferred and the deed duly recorded; and it is further

ORDERED, ADJUDGED AND DECREED that when the Referee files a report of sale, he or she shall concurrently file a Foreclosure Actions Surplus Monies Form; and it is further

ORDERED, ADJUDGED AND DECREED that to ensure compliance herewith, Plaintiff

shall file a written report with the court within six months from the date of entry of this judgment stating whether the sale has occurred and the outcome thereof.

Said property is commonly known as [*Street Address*].

The legal description of the mortgaged property referred to herein is annexed hereto as Schedule A [*If provided by Plaintiff, attach legal description as set forth on deed or mortgage*].

[*Attach Terms of Sale*]

DATED: _____

ENTER:

J.S.C.